

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

R.M.B., by his next friends and parents,)	
Robert Bruce Bays and Linda Markham Bays,)	
and)	
ROBERT BRUCE BAYS)	
and)	
LINDA MARKHAM BAYS,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 6:15cv4
)	
BEDFORD COUNTY SCHOOL BOARD,)	
BEDFORD COUNTY PUBLIC SCHOOLS,)	
BRIAN WILSON,)	
DR. FREDERICK M. DUIS, JR.,)	
and)	
M. M. CALOHAN,)	
)	
Defendants.)	

MOTION TO DISMISS OF DEFENDANT M. M. CALOHAN

Defendant M. M. Calohan, by counsel, moves pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure to dismiss the Complaint against her and in support thereof states as follows:

1. The allegations in Count II fail to state a claim for malicious prosecution because Plaintiffs do not allege any facts to support a finding of malice. Rather, Plaintiffs plead in conclusory fashion that Defendant Calohan acted with malice.
2. Defendant Calohan is immune from liability under Count II by virtue of qualified immunity because there was not a clearly established constitutional right to be free from malicious prosecution.

3. Count III does not state a claim upon which relief can be granted for malicious prosecution under Virginia law because Plaintiffs do not allege facts from which the Court could reasonably infer malice. Rather, Plaintiffs plead in conclusory fashion that Defendant Calohan acted with malice.

4. Count V fails to state a claim upon which relief can be granted because the damages sought in Count V are not available to Robert Bruce Bays and Linda Markham Bays.

For the foregoing reasons, Defendant M. M. Calohan respectfully moves the Court to sustain her motion to dismiss and dismiss the Complaint against Defendant Calohan with prejudice.

M. M. CALOHAN

By /s/ Jim H. Guynn, Jr.
Jim H. Guynn, Jr.
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CERTIFICATE OF SERVICE

I do hereby certify that on this 27th day of February, 2015, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Melvin E. Williams, Esq.
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Counsel for Plaintiff

By /s/ Jim H. Guynn, Jr.